

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

WILLIAM B. ELLIOTT,  
TOMMY J. EVARO, and  
ANDRIA J. HERNANDEZ,

Plaintiffs,

vs.

Civ. No. 10-385 JP/ACT

SUSANA MARTINEZ,  
District Attorney for the  
Third Judicial District of New Mexico,

Defendant.

MEMORANDUM OPINION AND ORDER

On April 21, 2010, the Plaintiffs filed a Complaint (Doc. No. 1) under 42 U.S.C. §1983 alleging violations of the Fourteenth Amendment of the United States Constitution. Plaintiffs, who are targets before various state grand juries, allege in the Complaint that Defendant denied them effective notice of grand jury presentments in violation of state law, 1978 NMSA §31-6-11(C)(2003). Having reviewed the Complaint *sua sponte* under Fed. R. Civ. P. 12(b)(6), the Court concludes that the Complaint should be dismissed without prejudice for failure to state a legally cognizable claim under federal law. *See Brereton v. Bountiful City Corp.*, 434 F.3d 1213, 1219 (10<sup>th</sup> Cir. 2006)(citations omitted)(“Where a complaint fails to state a claim, and no amendment could cure the defect, a dismissal *sua sponte* may be appropriate.”).

It is well-established that the Fourteenth Amendment of the United States Constitution does not guarantee defendants charged with crimes under state laws a due process right to indictment by a grand jury. *Branzburg v. Hayes*, 408 U.S. 665, 688 n.25 (1972). “[E]ven if a state adopts a grand jury system, federal constitutional requirements ... are not binding on the

states, except with respect to the racial or national composition of grand juries.” *Watson v. Jago*, 558 F.2d 330, 337 (6<sup>th</sup> Cir. 1977)(citations omitted). Consequently, defendants in state criminal cases do not have a “constitutional right to appear before a grand jury.” *See, e.g., United States v. Ruiz*, 894 F.2d 501, 505 (2<sup>nd</sup> Cir. 1990)(citing *United States v. Ciambrone*, 601 F.2d 616, 622-23 (2<sup>nd</sup> Cir. 1979)). The Fourteenth Amendment only requires that defendants in state criminal cases be given fair notice of the charges against them so that the defendants can adequately prepare a defense. *See, e.g., Watson*, 558 F.2d at 338-39. Hence, Plaintiffs’ allegation that they did not receive effective notice of state grand jury presentments simply fails to state a claim under the Fourteenth Amendment to the United States Constitution. Moreover, the Fourteenth Amendment claim is incapable of being cured by amendment of the Complaint. The Complaint will, therefore, be dismissed without prejudice under Rule 12(b)(6).

IT IS ORDERED that the Complaint will be dismissed without prejudice to Plaintiffs seeking relief in state court.

  
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SENIOR UNITED STATES DISTRICT JUDGE